

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CITY OF MEMPHIS

PLAINTIFF

VS.

CIVIL ACTION NO. No. 2:19-cv-02864-MSN-cgc

HORN LAKE CREEK BASIN INTERCEPTOR
SEWER DISTRICT and DESOTO COUNTY,
MISSISSIPPI

DEFENDANTS

**Horn Lake Creek Basin Interceptor Sewer District's
Estimated Construction Schedules and First Progress Report**

This Court's Memorandum Opinion and Order [Doc. # 153] set a deadline of December 29, 2023 for Horn Lake Creek Basin Interceptor Sewer District ("District") to file two items on the docket: an estimated construction schedule for construction or expansion of an alternative wastewater treatment facility, with the project to be completed by October 1, 2031; and a construction schedule for the remaining work needed to construct its peak flow storage facility. The Order goes on to require reports and updates on both schedules every six months thereafter. Because certain progress has to date been made toward both goals, this pleading includes both an initial report on current progress and a schedule for both projects.

The Storage Facility

At the time of this filing, the following action items have been completed with respect to the peak-flow storage facility:

- The project is fully funded. It will be paid for using a combination of:
 - \$9,000,000 from a federal American Rescue Plan Act ("ARPA") grant, via the Mississippi Department of Environmental Quality;

- \$10,000,000 in direct-allocated funds from the State of Mississippi, to be used in part for the storage facility project;
 - \$3,000,000 in direct-allocated funds from DeSoto County, Mississippi;
 - \$3,000,000 in direct-allocated funds from the City of Southaven, Mississippi;
 - and
 - \$3,000,000 in direct-allocated funds from the City of Horn Lake, Mississippi.
- Plans and Specifications have been completed by the District's engineer, Tim Verner of the Fisher Arnold firm.
- The land necessary for construction of the facility has been purchased.
- The "front-end documents" necessary to publish an invitation to bid (such as the bid form, the invitation to bid, the general conditions, and the supplemental conditions) have been finalized, including review by counsel to ensure compliance with applicable laws and regulations relating to the use of federal ARPA funds.

With the plans and specifications and front-end documents complete, and the necessary land obtained, the only remaining steps toward completing the peak-flow storage facility are to select a bidder, agree upon a contract, and complete construction. The District's proposed schedule going forward is:

- **Publication of invitation to bid:** The District will first publish its invitation to bid on or before January 4, 2024, with a second publication to follow a week later. The District will supplement this pleading with proof of publication.
- **Select a winning bidder:** A mandatory pre-bid meeting with all prospective bidders will be held on January 24, 2024. Bids will be opened on February 14, 2024 during the

District's regularly-scheduled Board meeting. The winning bidder will be selected via a Notice of Award by February 29, 2024.

- **Negotiate Contract:** The District will immediately begin negotiations with the winning bidder.
- **Begin Construction:** Construction will begin on the storage basin no later than fourteen (14) days after the winning bidder and the District have executed a contract.
- **Complete Construction and Begin Operation:** Construction is expected to take approximately 15 months. It will be completed and operation will begin by the end of the third quarter of 2025.

Factors that could cause delays in the above schedule include, but are not limited to, supply-chain issues; unexpected necessary change orders; failure to receive a suitable bid for construction; or weather-caused delays.

Long-Term Alternative Treatment

Agreement with DCRUA

At the time of this filing, the District's most significant achievement toward the eventual construction and operation of a new facility for the long-term treatment of the District's wastewater is the negotiating and finalizing of an agreement with the DeSoto County Regional Utility Authority ("DCRUA"), which governs the execution of the project and the treatment of the District's wastewater after the project is complete. Exhibit "A," executed contract. The contract is designed for the District to maintain sufficient control to ensure it complies with the Court's Order, while resting primary responsibility for funding, design, permitting, and construction with DCRUA. This balance is the result of several weeks of negotiations; DCRUA understandably desires to be the lead entity with respect to the

funding, design and construction of improvements to its own facilities, which it will then bear responsibility for operating. As a result of these successful negotiations, as stated at trial, the solution for the District's long-term wastewater treatment will take the form of a major expansion of DCRUA's existing Johnson Creek Wastewater Treatment Facility.

The reason for this overall approach is simple: with the completion of the Johnson Creek expansion, there will no longer be any inherent need for the District to exist. As set forth at trial and in multiple filings in this action, the District was established for the express purpose of providing a wastewater conveyance and treatment solution *within the Horn Lake Creek Basin* ("Basin"). Throughout its existence the District has provided that service by conveying wastewater north, via gravity flow, to the City of Memphis for treatment. The vast majority of the wastewater thus transported during the District's existence originates from the Cities of Southaven and Horn Lake. The portions of those cities located within the Basin currently discharge wastewater to the District, whereas the portions outside the Basin already discharge their wastewater to DCRUA for treatment. That is, the Cities of Southaven and Horn Lake are already customers – and board members – of DCRUA. With the completion of the Johnson Creek expansion, DCRUA will be treating the entirety of both Cities' wastewater volume. Because the Basin will no longer have its wastewater treated by a different entity than the rest of Southaven and Horn Lake, the District's reason for existence will be nullified.

With DCRUA taking the lead role in the project, the contract contains several provisions focused on ensuring compliance with the Court's Order. Section 3.1 of the contract explicitly states the parties intend to achieve "On-Time Completion" of the Johnson Creek expansion such that the District has disconnected its system from the City's by the Court's deadline of October 1, 2031. Exhibit "A." Sections 3.1 and 3.4 both provide the District with

authority to seek funding on its own in the event DCRUA is unable to secure sufficient funding in a timely enough manner to ensure On-Time Completion of the project. *Id.* Section 3.2 reemphasizes the parties' commitment to the District meeting its October 1, 2031 deadline for completion and the beginning of operations. *Id.* Section 3.3 provides the District with the right to a representative at all relevant meetings and to be copied on all relevant communications to "ensure the Project proceeds in a manner consistent with the Court Order." *Id.* Section 3.7 obligates the parties to "make all Commercially Reasonable Efforts and aspire to complete design, Regulatory Approval, and construction of the Project in a timely manner so as to begin operation no later than October 1, 2031, in accordance with the Court Order." *Id.* Article 5, which addresses the District's eventual dissolution once DCRUA is treating all wastewater originating from Southaven and Horn Lake, is contingent upon (*inter alia*) the District first having "fully complied with the Court Order." *Id.* at ¶ 5.1.2.

Now that an agreement is in place and DCRUA is committed to constructing the necessary expansion to Johnson Creek, the most significant political hurdle to the project has been cleared. The parties now have a specific, agreed plan on how the project will proceed and what role each party will play, with an emphasis on compliance with this Court's Order.

Funding

The first step to be completed in the project to expand Johnson Creek is to secure the necessary funding. The District has been in extensive discussions with DCRUA and is pleased to report significant progress toward obtaining funding. According to DCRUA, its Executive Director and two (2) Board Members recently met with the Mississippi Congressional Delegation to discuss funding for the Johnson Creek expansion project. The discussion was focused on seeking federal funding and/or assistance via the EPA State and Tribal Assistance

(“STAG”) Grant, which provides federal money for these projects of this type. DCRUA and the congressional representatives also discussed funds which may be available from other federal programs. DCRUA and the District have also had positive discussions with leadership in both houses of the Mississippi Legislature about direct-allocated state funding for the project, and the DeSoto County delegation has expressed enthusiasm for helping to obtain such funding in the upcoming session. Both entities have received positive indications from MDEQ regarding the likely availability of low-interest State Revolving Fund (“SRF”) loans in 2024 and 2025 as well.

One issue with funding the project arises from DCRUA’s statutory limit on its bonding authority. At present, DCRUA is limited to a total of \$40,000,000 in bonding capacity. DCRUA’s governing Board has passed a resolution requesting that the Mississippi state legislature eliminate this restriction on DCRUA’s bonding authority during the upcoming 2024 regular session. DCRUA is optimistic that this legislative goal will be achieved. However, as noted above, the District’s contract with DCRUA includes two provisions allowing the District to seek funding on its own if DCRUA’s bonding authority is not increased and/or if DCRUA cannot otherwise secure sufficient funding for On-Time Completion. Exhibit “A.” Accordingly, whether via public grant or loan funding, bond financing, or (most likely) a combination of both, the District maintains the ability to ensure funding is obtained in a timely manner to allow it to meet the Court's October 1, 2031 deadline.

Proposed Schedule

The following schedule is based on a collaboration between Mr. Verner and Tracy Huffman, lead engineer for DCRUA. The schedule addresses both the main project of

expanding the Johnson Creek facility and the necessary improvements to allow the District's wastewater to be properly treated and disposed of at the expanded plant, including a new pump station and force main to convey the District's untreated wastewater against natural gravity flow south to the Johnson Creek facility for treatment ("Influent Pump Station") and a new pump station and force main to convey treated effluent to the Mississippi River ("Effluent Pump Station"). References to the "Johnson Creek expansion" refer to all necessary construction and equipment to allow the District's wastewater flow, along with the DCRUA flow currently treated at the Johnson Creek facility, to be properly treated at the Johnson Creek facility.

- **Pre-Construction** for the Effluent Pump Station will be completed by the **end of 2026**. Pre-construction includes:
 - **Acquiring funding** sufficient to begin soliciting bids for the Johnson Creek expansion.
 - **Design and specifications** for the Johnson Creek expansion and the Influent and Effluent Pump Stations, to a degree sufficient to apply for regulatory permits.
 - **Applying for and obtaining all necessary regulatory permits** for each aspect of the project.
 - **Land acquisition** necessary for the Influent and Effluent Pump Stations and their attendant force mains.
- **The bidding process will begin** for the Effluent Pump Station by **the end of the first quarter of 2027**. This deadline is based on recent experience of the extended times needed to obtain permits from MDEQ.

- **Bids will be solicited and contracts will be negotiated** for the construction of the Effluent Pump Station **by the end of the second quarter of 2027.**
- **Construction will begin** on the Effluent Pump Station **in the third quarter of 2027.**
- **Pre-Construction** (consisting of the four elements of funding, design and specifications, permitting, and land acquisition, as set forth above) for the Johnson Creek expansion and the Influent Pump Station will be completed **by the end of 2027.**
- **Bids will be solicited and contracts will be negotiated** for the construction of the Johnson Creek expansion and the Influent Pump Station **by the end of the first quarter of 2028.**
- **Construction will begin** on the Johnson Creek expansion and the Influent Pump Station **in the second quarter of 2028.**
- **Construction will be completed** on both the Johnson Creek expansion and the Influent and Effluent Pump Stations **by the end of 2030.**
- **The entire project will be operational and the District will disconnect its interceptor from the City of Memphis sewer system by October 1, 2031.**

Respectfully submitted, this the 29th day of December, 2023.

HORN LAKE CREEK BASIN INTERCEPTOR
SEWER DISTRICT

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